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110TH CONGRESS }
2d Session }

SENATE

{ REPORT
110-395 }

OVER-THE-ROAD BUS TRANSPORTATION
ACCESSIBILITY ACT OF 2007

R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND
TRANSPORTATION

ON

H.R. 3985



JUNE 23, 2008.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

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SECOND SESSION

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OVER-THE-ROAD BUS TRANSPORTATION ACCESSIBILITY ACT OF 2007

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Mr. INOUE, from the Committee on Commerce, Science, and
Transportation, submitted the following

REPORT

[To accompany H.R. 3985]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (H.R. 3985) to amend title 49, United States Code, to direct the Secretary of Transportation to register a person providing transportation by an over-the-road bus¹ as a motor carrier of passengers only if the person is willing and able to comply with certain accessibility requirements in addition to other existing requirements, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3985, the Over-the-Road Bus Transportation Accessibility Act of 2007, is to clarify the Federal Motor Carrier Safety Administration's (FMCSA) responsibility and authority to enforce compliance with the Department of Transportation's (DOT) over-the-road bus passenger accessibility regulations promulgated pursuant to the Americans with Disabilities Act (ADA, Public Law 101-336).

BACKGROUND AND NEEDS

H.R. 3985 would clarify the FMCSA's responsibility and authority to enforce compliance with DOT over-the-road bus passenger accessibility regulations promulgated pursuant to the ADA. The

¹An "over-the-road bus" is defined as a bus with an elevated passenger deck over a baggage compartment.

FMCSA claims that, under current statutes and through the interpretation of prior regulations, they do not have the authority to require that motor carriers, as a condition of receiving operating authority, operate over-the-road buses that comply with accessibility regulations promulgated by the DOT pursuant to the ADA. Rather, the FMCSA has pointed to the Department of Justice (DOJ), which is generally charged with the enforcement of the ADA, as the agency responsible for ensuring motor carrier compliance with the DOT's ADA-related regulations. The DOJ, however, has generally chosen not to take enforcement actions against over-the-road bus operators that fail to comply with the DOT's accessibility regulations, despite claims of widespread non-compliance by certain over-the-road bus operators. This situation has stymied adequate enforcement of the over-the-road accessibility requirements, and H.R. 3985 would address this by clarifying that the FMCSA shall consider compliance with accessibility regulations as a criterion for a motor carrier's fitness for the purpose of obtaining operating authority.

In 1998, per the requirements of the ADA, the DOT adopted a final rule requiring all over-the-road bus motor carriers to accommodate individuals with disabilities. This rule (1) prohibits discrimination against an individual with a disability in connection with the provision of transportation service; (2) requires fixed-route² passenger carriers to operate vehicles readily accessible to and usable by individuals with disabilities; and (3) provides that violations of the ADA by passenger carriers not receiving governmental assistance be referred to the DOJ for investigation and enforcement. These accessibility requirements for over-the-road buses vary by operator size, as determined by gross annual transportation revenue, and type of transportation service offered by the carrier, fixed-route or demand-responsive, such as a charter or tour service. Large fixed-route operators must ensure that all new purchased or leased over-the-road buses are accessible and were required to outfit half their fleet with accessible buses by October 2006, with the remaining half due to be outfitted by October 2012. Small fixed-route companies are required to ensure that each new over-the-road bus purchased or leased is accessible, and while there is no accessibility deadline for small fixed-route fleets, such motor carriers must provide an accessible bus upon request, with 48-hours advance notice, or provide equivalent service until they become accessible. Both large and small demand-responsive companies must provide accessible service on a 48-hour advance notice basis, but small companies are not required to fundamentally alter reservation practices or displace other passengers in order to meet these requirements.

The FMCSA's standards for granting a motor carrier operating authority to transport passengers, established in section 13902(a)(1) of title 49, United States Code, require the company to be "willing and able to comply with this part and applicable regulations of the Secretary" including safety regulations and fitness and insurance requirements. The FMCSA has interpreted this section very narrowly so as to consider the phrase "applicable regulations of the Secretary" as only applying to regulations relating to part B

² Fixed-route service is transportation along a prescribed route according to a fixed schedule.

of subtitle 49, United State Code, referenced by the proceeding words “this part.” Part B contains the statutory authority that was transferred to the FMCSA from the Interstate Commerce Commission (ICC) after the ICC was terminated in 1995. This narrow reading and the Department’s view that the ICC authority and regulations transferred to it did not include enforcement of ADA compliance has thus limited the DOT’s ability to enforce its own accessibility requirements through the granting, denial, or revocation of operating authority. The FMCSA’s interpretation of 13902(a)(1) of title 49, United States Code, created a lack of enforcement in this area, resulting in a number of court actions against the agency brought primarily by over-the-road bus operators who currently comply with the DOT’s accessibility regulations and who are seeking to ensure that other bus operators are compelled to comply with these requirements.

In April 2005, Peter Pan Bus Lines, Inc., and Bonanza Acquisition LLC (Peter Pan) filed a protest with FMCSA challenging Fung Wah Bus Transportation, Inc.’s (Fung Wah) operating authority application on the grounds that Fung Wah was not willing or able to comply with the DOT’s accessibility regulations. The FMCSA rejected Peter Pan’s protest on October 26, 2005, concluding that “applicable regulations” do not refer to all regulations promulgated by the Secretary for motor carriers. Rather, the FMCSA reasoned that the statute should be narrowly construed to mean only “applicable regulations” in “this part” of the statute and not regulations found elsewhere, such as the ADA requirements. The agency claimed that this interpretation was apparent from the plain language of the statute and its analysis of legislative history and required no further investigation. Therefore, because Peter Pan could not prove Fung Wah was unwilling or unable to comply with the DOT operating authority requirements, as the FMCSA construes them to apply, the FMCSA dismissed the case and subsequently denied a petition for reconsideration.

Peter Pan appealed the FMCSA’s decision to the U.S. Court of Appeals, which issued a ruling on December 19, 2006, reversing the FMCSA’s decision, rejecting that the statute was plain on its face, and remanding the case back to the FMCSA. The Court of Appeals found “this part and applicable regulations” to be ambiguous, requiring further interpretation. The concurring decision also questioned the reasonableness of FMCSA’s principal justification for declining to review bus company ADA compliance during the registration process, which the court noted essentially chooses the preservation of motor carrier competition over the rights of the disabled.

The FMCSA reopened the record in February 2007 and offered Fung Wah the opportunity to respond to Peter Pan’s protest and for Peter Pan to reply. On February 26, 2007, Fung Wah stated that Congress did not give the FMCSA the statutory authority to refuse operating authority based on ADA compliance because ADA compliance was not a fitness criterion for registration. Even if the FMCSA had such authority, Fung Wah said it was willing and able to comply with accessibility requirements. In response, Peter Pan restated its original argument on March 1, 2007, that “ADA is a required element of fitness to receive operating authority” and Fung Wah did not meet the necessary fitness criterion.

On July 16, 2007, to indicate its displeasure with the FMCSA decision in this matter, the Senate Appropriations Committee included report language in the report accompanying the Fiscal Year (FY) 2008 Departments of Transportation and Housing and Urban Development Appropriations Act instructing the Secretary to enforce the bus accessibility requirements. The House Appropriations Committee report also contained a similar admonition. The Senate report language states:

The Committee is greatly dismayed by the [FMCSA's] continuing failure to exercise the [DOT's] authority to deny operating authority to interstate bus companies that are unwilling or unable to comply with the [ADA]. DOT's regulations under 49 CFR Part 37, Subpart H requires accessibility to over-the-road buses for people with disabilities. The U.S. Court of Appeals for the D.C. Circuit rejected FMCSA's assertion that it did not have the authority to deny bus operators registration on these grounds and remanded the case to FMCSA for further interpretation of the statutory language. In the many months that have passed since that decision, no action has been taken by FMCSA. The Committee expects FMCSA to take immediate action to implement the Court's decision without further delay. That action should ensure that discrimination against people with disabilities precludes bus operators from registering as interstate motor carriers to the same extent to which other forms of discrimination and serious safety violations preclude such registration. The Committee further directs the Secretary of Transportation to provide a letter report to the Committee no later than 30 days following the reporting of this bill to explain how she and her Federal Motor Carrier Safety Administrator have implemented the Circuit Court decision and the Committee's directive.³

The FMCSA issued a decision in this case on October 26, 2007. Despite the Court of Appeals' indication that the FMCSA should include ADA compliance in its new interpretation of the statutory language, the FMCSA again rejected Peter Pan's request to deny Fung Wah operating authority because they were not ADA compliant. Expanding beyond the FMCSA's first decision, in this second ruling, the FMCSA argued again that (1) the authority to enforce ADA compliance rested with a different agency, the DOJ; (2) the ICC's own ADA accessibility regulations and any related enforcement authority were superseded by the ADA before the ICC's authority was transferred to the DOT; (3) the ICC never conditioned operating authority on ADA compliance and thus, neither should the DOT; and (4) the ICC Termination Act of 1995 (ICCTA) limited the factors that could be considered in granting operating authority, so a broad reading of the requirements is inconsistent with the intent of Congress.

According to the FMCSA, the statutory authority transferred to the FMCSA after the ICC was dismantled through the ICCTA did not include accessibility compliance in the determination of a motor

³ Senate Report 110-131, page 72.

carrier's fitness for operation. The FMCSA argued that Congress, through statute, had limited the fitness elements the FMCSA could consider in an operating authority case to safety and financial responsibility. The FMCSA concluded that since the ICC had incorporated the Secretary's ADA regulation into its own regulations after 1991, the ICC had thus "declared that its regulations were superseded by the ADA and that the responsibility for regulating service to disabled passengers now rested with other agencies or departments." According to the DOT, since the disabled accessibility rules were no longer "ICC regulations," DOT could not consider them as part of granting operating authority after ICCTA transferred that responsibility to the DOT. Rather, the FMCSA claimed that the DOJ, as the lead department for enforcing ADA compliance, is responsible for ensuring that an over-the-road bus company meet any federal accessibility requirements. Therefore, the FMCSA concluded that limited reading of the fitness element was consistent with Congressional intent and that its earlier decision against Peter Pan in 2005 was "reasonable."

The FMCSA's decision has drawn criticism, since many believe that by modifying its regulations to incorporate by reference DOT's ADA regulations, the ICC intended to make the DOT regulations part of the ICC regulations. As such, the FMCSA should have considered compliance with them as a condition of granting operating authority for buses and other passenger carriers. Opponents of the FMCSA's position believe that its interpretation of the statute and its refusal to ensure that over-the-road buses comply with the accessibility requirements call into question the DOT's sincerity towards upholding its commitments under the ADA. In the final conference report accompanying the FY 2008 Departments of Transportation and Housing and Urban Development Appropriations bill issued on November 13, 2007,⁴ the Conferees stated:

The conferees reiterate concerns expressed in both the House and Senate Committee reports regarding DOT's failure to enforce its own regulations requiring accessibility to over-the-road buses for people with disabilities. The U.S. Court of Appeals for the D.C. Circuit rejected FMCSA's assertion that it did not have the authority to deny bus operators registration based on an interstate bus company's unwillingness or inability to comply with DOT's ADA regulations, and remanded the case to FMCSA for further interpretation. On October 26, 2007, FMCSA responded by reasserting its claim that it lacks the authority to enforce DOT's own ADA regulations. The conferees find this interpretation to be mystifying, unacceptable, and deliberately evasive. It certainly calls into question the commitment of both the Secretary and the Administrator to enforcing both the letter and the spirit of Federal laws designed to protect the rights of the disabled. The conferees disagree with FMCSA that further statutory language is needed to clarify FMCSA's enforcement role in this area. Even so, given the recalcitrant stance and steadfast refusal of the Secretary and the Administrator to enforce the

⁴ House Report 110-446. The bill, H.R. 3074, was subsequently enacted as part of the FY 2008 Consolidated Appropriations Act (P.L. 110-161).

law on this matter, the conferees are supportive of the prompt enactment of H.R. 3985: the Over-the-Road Bus Transportation Accessibility Act of 2007. This bill makes clear, again, that FMCSA has the authority to enforce compliance with DOT's ADA regulations in this area. The conferees can only hope that, once this law is enacted, the Secretary and Administrator will not concoct still further evasive strategies to avoid their statutory responsibility.

SUMMARY OF PROVISIONS

H.R. 3985 would amend title 49, United States Code, to "direct the Secretary of Transportation to register a person providing transportation by an over-the-road bus as a motor carrier of passengers only if the person is willing and able to comply with certain accessibility requirements in addition to other existing requirements." The accessibility requirements, established under title 49, part 37, subpart H of the Code of Federal Regulations, require over-the-road bus operators to purchase or lease accessible vehicles or provide accessible service to passengers with disabilities with 48 hour advance notice, depending on fleet size and types of service operated by the carrier. The bill also would require the DOT and the DOJ to enter into a memorandum of understanding regarding the enforcement and compliance of over-the-road bus carriers with the accessibility requirements.

LEGISLATIVE HISTORY

H.R. 3985 was introduced on October 29, 2007, by Representative DeFazio and cosponsored by Representatives Oberstar, Mica, and Duncan. On December 12, 2007, the bill passed the House of Representatives by a vote of 374 to 0 and was subsequently referred to the Senate Committee on Commerce, Science, and Transportation for consideration. The Committee met in an open executive session on April 24, 2008, and ordered H.R. 3985 reported favorably, without amendment.

Staff assigned to this legislation are Stephen Gardner, Senior Democratic Professional Staff, Melissa Porter, Democratic Transportation Counsel, Betsy McDonnell, Republican Professional Staff, and Suzanne Newhouse, Republican Transportation Counsel.

ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

H.R. 3985—Over-the-Road Bus Transportation Accessibility Act of 2007

H.R. 3985 would require the Federal Motor Carrier Safety Administration (FMCSA) to ensure that operators of over-the-road buses comply with the Americans With Disabilities Act (ADA). (Generally, over-the-road buses are those that have elevated passenger decks located over baggage compartments.) Under H.R. 3985, the FMCSA would be required to review applications for li-

censes to operate such vehicles to ensure that the operators comply with federal accessibility regulations issued under the ADA. In addition to performing safety audits for new licensees, the agency also would include ADA requirements in the compliance reviews of bus operators that it undertakes in the future.

Based on information provided by the FMCSA, CBO estimates that developing and enforcing new regulations to implement H.R. 3985 would cost the agency about \$500,000 in fiscal year 2009 and less than \$300,000 each year thereafter. First-year costs include one-time systems upgrades and training expenses. Enacting the legislation would not affect direct spending or revenues.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provision that establishes or enforces statutory rights that prohibit discrimination on the basis of disability. CBO has determined that the provisions of H.R. 3985 fall within that exclusion; therefore, we have not reviewed them for intergovernmental or private-sector mandates.

On November 9, 2007, CBO transmitted a cost estimate for H.R. 3985, as ordered reported by the House Committee on Transportation and Infrastructure. The two versions of the legislation are identical, and the estimated cost is the same except that CBO now expects the first-year of cost would be for fiscal year 2009 instead of 2008.

The CBO staff contact for this estimate is Deborah Reis. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

NUMBER OF PERSONS COVERED

H.R. 3985 does not impose any additional regulatory or compliance requirements on over-the-road bus carriers. However, because the bill clarifies FMCSA's authority to enforce DOT's over-the-road bus passenger accessibility regulations against over-the-road bus carriers that are not compliant, any carriers that are non-compliant as of the date of enactment will be subject to additional enforcement action. Because no monitoring of non-compliant carriers has been done to date, it is unknown how many carriers are non-compliant.

ECONOMIC IMPACT

This legislation would not have an adverse economic impact on the Nation. It does not introduce new regulations but merely provides better enforcement. Carriers that are not already compliant with DOT's ADA regulations will have to spend funds to purchase or lease an ADA compliant over-the-road bus; retrofit the old over-the-road bus fleet; provide equivalent service; or face potential enforcement action by FMCSA. Any carrier costs that are incurred to ensure compliance with the DOT's ADA regulations will help avoid the costs associated with an enforcement action or litigation, including fines and penalties. Additionally, more passengers with dis-

abilities will also be able to use more easily these newly compliant carriers' transportation services, potentially having a positive impact on carrier revenues.

PRIVACY

H.R. 3985 would have no effect on the privacy rights of individuals.

PAPERWORK

The Committee does not anticipate a major increase in paperwork burdens for individuals or business resulting from the passage of this legislation. Any additional paperwork for FMCSA that may result from considering ADA compliance as a condition of receiving operating authority is aimed at ensuring citizens with disabilities have an equal right to ride on over-the-road buses, as required by the ADA.

CONGRESSIONALLY DIRECTED SPENDING

In compliance with paragraph 4(b) of rule XLIV of the Standing Rules of the Senate, the Committee provides that the bill, as reported, does not contain any congressionally directed spending items as defined in the rule.

SECTION-BY-SECTION ANALYSIS

Section 1. This section would title the bill the "Over-the-Road Bus Transportation Accessibility Act of 2007."

Section 2. This section would require the DOT to consider a motor carrier's compliance with accessibility regulations when granting operating authority to provide passenger transportation by an over-the-road bus. It also would enable the DOT to suspend, amend, or revoke a motor carrier's registration for failure to comply with DOT's accessibility requirements and would add failure to comply with such accessibility requirements to the list of circumstances under which the Secretary of Transportation may hear a complaint regarding a motor carrier's registration.

Section 3. This section would define over-the-road buses as buses "characterized by an elevated passenger deck located over a baggage compartment."

Section 4. This section would require that, not later than 30 days after the date of enactment of this Act, the Secretary take necessary actions to implement the changes required by the Act relating to registration of motor carriers providing transportation by an over-the-road bus.

Section 5. This section would obligate the DOT and the DOJ to enter into a memorandum of understanding not later than six months after the date of enactment of the Act which would outline the specific roles and responsibilities of each Department in enforcing compliance of over-the-road bus carriers with accessibility requirements and recognize the DOT's statutory responsibility to enforce accessibility compliance, as clarified by this Act.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 49, UNITED STATES CODE

SUBTITLE IV—INTERSTATE TRANSPORTATION

PART B—MOTOR CARRIERS, WATER CARRIERS, BROKERS, AND FREIGHT FORWARDERS

CHAPTER 131—GENERAL PROVISIONS

§ 13102. Definitions

In this part, the following definitions shall apply:

(1) BOARD.—The term “Board” means the Surface Transportation Board.

(2) BROKER.—The term “broker” means a person, other than a motor carrier or an employee or agent of a motor carrier, that as a principal or agent sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

(3) CARRIER.—The term “carrier” means a motor carrier, a water carrier, and a freight forwarder.

(4) CONTRACT CARRIAGE.—The term “contract carriage” means—

(A) for transportation provided before January 1, 1996, service provided pursuant to a permit issued under section 10923, as in effect on December 31, 1995; and

(B) for transportation provided after December 31, 1995, service provided under an agreement entered into under section 14101(b).

(5) CONTROL.—The term “control”, when referring to a relationship between persons, includes actual control, legal control, and the power to exercise control, through or by—

(A) common directors, officers, stockholders, a voting trust, or a holding or investment company, or

(B) any other means.

(6) FOREIGN MOTOR CARRIER.—The term “foreign motor carrier” means a person (including a motor carrier of property but excluding a motor private carrier)—

(A)(i) that is domiciled in a contiguous foreign country;
or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor carrier of property, that provides interstate transportation of property by commercial motor vehicle (as defined in section 31132) under an agreement or contract entered into with a motor carrier of property (other than a motor private carrier or a motor carrier of property described in subparagraph (A)).

(7) FOREIGN MOTOR PRIVATE CARRIER.—The term “foreign motor private carrier” means a person (including a motor private carrier but excluding a motor carrier of property)—

(A)(i) that is domiciled in a contiguous foreign country; or

(ii) that is owned or controlled by persons of a contiguous foreign country; and

(B) in the case of a person that is not a motor private carrier, that provides interstate transportation of property by commercial motor vehicle (as defined in section 31132) under an agreement or contract entered into with a person (other than a motor carrier of property or a motor private carrier described in subparagraph (A)).

(8) FREIGHT FORWARDER.—The term “freight forwarder” means a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—

(A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;

(B) assumes responsibility for the transportation from the place of receipt to the place of destination; and

(C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.

The term does not include a person using transportation of an air carrier subject to part A of subtitle VII.

(9) HIGHWAY.—The term “highway” means a road, highway, street, and way in a State.

(10) HOUSEHOLD GOODS.—The term “household goods”, as used in connection with transportation, means personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is—

(A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the carrier by, the householder; or

(B) arranged and paid for by another party.

(11) HOUSEHOLD GOODS FREIGHT FORWARDER.—The term “household goods freight forwarder” means a freight forwarder

of one or more of the following items: household goods, unaccompanied baggage, or used automobiles.

(12) HOUSEHOLD GOODS MOTOR CARRIER.—

(A) IN GENERAL.—The term “household goods motor carrier” means a motor carrier that, in the ordinary course of its business of providing transportation of household goods, offers some or all of the following additional services:

- (i) Binding and nonbinding estimates.
- (ii) Inventorying.
- (iii) Protective packing and unpacking of individual items at personal residences.
- (iv) Loading and unloading at personal residences.

(B) INCLUSION.—The term includes any person that is considered to be a household goods motor carrier under regulations, determinations, and decisions of the Federal Motor Carrier Safety Administration that are in effect on the date of enactment of the Household Goods Mover Oversight Enforcement and Reform Act of 2005.

(C) LIMITED SERVICE EXCLUSION.—The term does not include a motor carrier when the motor carrier provides transportation of household goods in containers or trailers that are entirely loaded and unloaded by an individual (other than an employee or agent of the motor carrier).

(13) INDIVIDUAL SHIPPER.—The term “individual shipper” means any person who—

- (A) is the shipper, consignor, or consignee of a household goods shipment;
- (B) is identified as the shipper, consignor, or consignee on the face of the bill of lading;
- (C) owns the goods being transported; and
- (D) pays his or her own tariff transportation charges.

(14) MOTOR CARRIER.—The term “motor carrier” means a person providing commercial motor vehicle (as defined in section 31132) transportation for compensation.

(15) MOTOR PRIVATE CARRIER.—The term “motor private carrier” means a person, other than a motor carrier, transporting property by commercial motor vehicle (as defined in section 31132) when—

- (A) the transportation is as provided in section 13501 of this title;
- (B) the person is the owner, lessee, or bailee of the property being transported; and
- (C) the property is being transported for sale, lease, rent, or bailment or to further a commercial enterprise.

(16) MOTOR VEHICLE.—The term “motor vehicle” means a vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway in transportation, or a combination determined by the Secretary, but does not include a vehicle, locomotive, or car operated only on a rail, or a trolley bus operated by electric power from a fixed overhead wire, and providing local passenger transportation similar to street-railway service.

(17) NONCONTIGUOUS DOMESTIC TRADE.—The term “non-contiguous domestic trade” means transportation subject to jurisdiction under chapter 135 involving traffic originating in or destined to Alaska, Hawaii, or a territory or possession of the United States.

(18) PERSON.—The term “person”, in addition to its meaning under section 1 of title 1, includes a trustee, receiver, assignee, or personal representative of a person.

(19) PRE-ARRANGED GROUND TRANSPORTATION SERVICE.—The term “pre-arranged ground transportation service” means transportation for a passenger (or a group of passengers) that is arranged in advance (or is operated on a regular route or between specified points) and is provided in a motor vehicle with a seating capacity not exceeding 15 passengers (including the driver).

(20) SECRETARY.—The term “Secretary” means the Secretary of Transportation.

(21) STATE.—The term “State” means the 50 States of the United States and the District of Columbia.

(22) TAXICAB SERVICE.—The term “taxicab service” means passenger transportation in a motor vehicle having a capacity of not more than 8 passengers (including the driver), not operated on a regular route or between specified places, and that—

(A) is licensed as a taxicab by a State or a local jurisdiction; or

(B) is offered by a person that—

(i) provides local transportation for a fare determined (except with respect to transportation to or from airports) primarily on the basis of the distance traveled; and

(ii) does not primarily provide transportation to or from airports.

(23) TRANSPORTATION.—The term “transportation” includes—

(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and

(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property.

(24) UNITED STATES.—The term “United States” means the States of the United States and the District of Columbia.

(25) VESSEL.—The term “vessel” means a watercraft or other artificial contrivance that is used, is capable of being used, or is intended to be used, as a means of transportation by water.

(26) WATER CARRIER.—The term “water carrier” means a person providing water transportation for compensation.

(27) OVER-THE-ROAD BUS.—*The term “over-the-road bus” means a bus characterized by an elevated passenger deck located over a baggage compartment.*

CHAPTER 139. REGISTRATION

§ 13902. Registration of motor carriers

(a) MOTOR CARRIER GENERALLY.—

(1) IN GENERAL.—Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with—

(A) this part and the applicable regulations of the Secretary and the Board;

(B)(i) any safety regulations imposed by the Secretary;

(ii) the duties of employers and employees established by the Secretary under section 31135; and

(iii) the safety fitness requirements established by the Secretary under section 31144; **[and]**

(C) the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus; and

[(C)] (D) the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

(2) ADDITIONAL REGISTRATION REQUIREMENTS FOR HOUSEHOLD GOODS MOTOR CARRIERS.—In addition to meeting the requirements of paragraph (1), the Secretary may register a person to provide transportation of household goods as a household goods motor carrier only after that person—

(A) provides evidence of participation in an arbitration program and provides a copy of the notice of the arbitration program as required by section 14708(b)(2);

(B) identifies its tariff and provides a copy of the notice of the availability of that tariff for inspection as required by section 13702(c);

(C) provides evidence that it has access to, has read, is familiar with, and will observe all applicable Federal laws relating to consumer protection, estimating, consumers' rights and responsibilities, and options for limitations of liability for loss and damage; and

(D) discloses any relationship involving common stock, common ownership, common management, or common familial relationships between that person and any other motor carrier, freight forwarder, or broker of household goods within 3 years of the proposed date of registration.

(3) CONSIDERATION OF EVIDENCE; FINDINGS.—The Secretary shall consider, and to the extent applicable, make findings on any evidence demonstrating that the registrant is unable to comply with any applicable requirement of paragraph (1) or, in the case of a registrant to which paragraph (2) applies, paragraph (1) or (2).

(4) WITHHOLDING.—If the Secretary determines that a registrant under this section does not meet, or is not able to meet, any requirement of paragraph (1) or, in the case of a registrant

to which paragraph (2) applies, paragraph (1) or (2), the Secretary shall withhold registration.

(5) LIMITATION ON COMPLAINTS.—The Secretary may hear a complaint from any person concerning a registration under this subsection only on the ground that the registrant fails or will fail to comply with this part, the applicable regulations of the Secretary and the Board (*including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus*), the safety regulations of the Secretary, or the safety fitness or minimum financial responsibility requirements of paragraph (1) of this subsection. In the case of a registration for the transportation of household goods as a household goods motor carrier, the Secretary may also hear a complaint on the ground that the registrant fails or will fail to comply with the requirements of paragraph (2) of this subsection.

(b) MOTOR CARRIERS OF PASSENGERS.—

(1) REGISTRATION OF PRIVATE RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—The Secretary shall register under subsection (a)(1) a private recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that the transportation to be provided pursuant to the registration is not in the public interest.

(2) REGISTRATION OF PUBLIC RECIPIENTS OF GOVERNMENTAL ASSISTANCE.—

(A) CHARTER TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide special or charter transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that—

(i) the recipient meets the requirements of subsection (a)(1); and

(ii)(I) no motor carrier of passengers (other than a motor carrier of passengers which is a public recipient of governmental assistance) is providing, or is willing to provide, the transportation; or

(II) the transportation is to be provided entirely in the area in which the public recipient provides regularly scheduled mass transportation services.

(B) REGULAR-ROUTE TRANSPORTATION.—The Secretary shall register under subsection (a)(1) a public recipient of governmental assistance to provide regular-route transportation subject to jurisdiction under subchapter I of chapter 135 as a motor carrier of passengers if the Secretary finds that the recipient meets the requirements of subsection (a)(1), unless the Secretary finds, on the basis of evidence presented by any person objecting to the registration, that

the transportation to be provided pursuant to the registration is not in the public interest.

(C) TREATMENT OF CERTAIN PUBLIC RECIPIENTS.—Any public recipient of governmental assistance which is providing or seeking to provide transportation of passengers subject to jurisdiction under subchapter I of chapter 135 shall, for purposes of this part, be treated as a person which is providing or seeking to provide transportation of passengers subject to such jurisdiction.

(3) INTRASTATE TRANSPORTATION BY INTERSTATE CARRIERS.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(4) PREEMPTION OF STATE REGULATION REGARDING CERTAIN SERVICE.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard or other provision having the force and effect of law relating to the provision of pickup and delivery of express packages, newspapers, or mail in a commercial zone if the shipment has had or will have a prior or subsequent movement by bus in intrastate commerce and, if a city within the commercial zone, is served by a motor carrier of passengers providing regular-route transportation of passengers subject to jurisdiction under subchapter I of chapter 135.

(5) JURISDICTION OVER CERTAIN INTRASTATE TRANSPORTATION.—Subject to section 14501(a), any intrastate transportation authorized by this subsection shall be treated as transportation subject to jurisdiction under subchapter I of chapter 135 until such time as the carrier takes such action as is necessary to establish under the laws of such State rates, rules, and practices applicable to such transportation, but in no case later than the 30th day following the date on which the motor carrier of passengers first begins providing transportation entirely in one State under this paragraph.

(6) SPECIAL OPERATIONS.—This subsection shall not apply to any regular-route transportation of passengers provided entirely in one State which is in the nature of a special operation.

(7) SUSPENSION OR REVOCATION.—Intrastate transportation authorized under this subsection may be suspended or revoked by the Secretary under section 13905 of this title at any time.

(8) DEFINITIONS.—In this subsection, the following definitions apply:

(A) PUBLIC RECIPIENT OF GOVERNMENTAL ASSISTANCE.—The term “public recipient of governmental assistance” means—

- (i) any State,
- (ii) any municipality or other political subdivision of a State,

(iii) any public agency or instrumentality of one or more States and municipalities and political subdivisions of a State,

(iv) any Indian tribe, and

(v) any corporation, board, or other person owned or controlled by any entity described in clause (i), (ii), (iii), or (iv), which before, on, or after January 1, 1996, received governmental assistance for the purchase or operation of any bus.

(B) PRIVATE RECIPIENT OF GOVERNMENT ASSISTANCE.—

The term “private recipient of government assistance” means any person (other than a person described in subparagraph (A)) who before, on, or after January 1, 1996, received governmental financial assistance in the form of a subsidy for the purchase, lease, or operation of any bus.

(c) RESTRICTIONS ON MOTOR CARRIERS DOMICILED IN OR OWNED OR CONTROLLED BY NATIONALS OF A CONTIGUOUS FOREIGN COUNTRY.—

(1) PREVENTION OF DISCRIMINATORY PRACTICES.—If the President, or the delegate thereof, determines that an act, policy, or practice of a foreign country contiguous to the United States, or any political subdivision or any instrumentality of any such country is unreasonable or discriminatory and burdens or restricts United States transportation companies providing, or seeking to provide, motor carrier transportation to, from, or within such foreign country, the President or such delegate may—

(A) seek elimination of such practices through consultations; or

(B) notwithstanding any other provision of law, suspend, modify, amend, condition, or restrict operations, including geographical restriction of operations, in the United States by motor carriers of property or passengers domiciled in such foreign country or owned or controlled by persons of such foreign country.

(2) EQUALIZATION OF TREATMENT.—Any action taken under paragraph (1)(A) to eliminate an act, policy, or practice shall be so devised so as to equal to the extent possible the burdens or restrictions imposed by such foreign country on United States transportation companies.

(3) REMOVAL OR MODIFICATION.—The President, or the delegate thereof, may remove or modify in whole or in part any action taken under paragraph (1)(A) if the President or such delegate determines that such removal or modification is consistent with the obligations of the United States under a trade agreement or with United States transportation policy.

(4) PROTECTION OF EXISTING OPERATIONS.—Unless and until the President, or the delegate thereof, makes a determination under paragraph (1) or (3), nothing in this subsection shall affect—

(A) operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country permitted in the commercial zones along the

United States-Mexico border as such zones were defined on December 31, 1995; or

(B) any existing restrictions on operations of motor carriers of property or passengers domiciled in any contiguous foreign country or owned or controlled by persons of any contiguous foreign country or any modifications thereof pursuant to section 6 of the Bus Regulatory Reform Act of 1982.

(5) PUBLICATION; COMMENT.—Unless the President, or the delegate thereof, determines that expeditious action is required, the President shall publish in the Federal Register any determination under paragraph (1) or (3), together with a description of the facts on which such a determination is based and any proposed action to be taken pursuant to paragraph (1)(B) or (3), and provide an opportunity for public comment.

(6) DELEGATION TO SECRETARY.—The President may delegate any or all authority under this subsection to the Secretary, who shall consult with other agencies as appropriate. In accordance with the directions of the President, the Secretary may issue regulations to enforce this subsection.

(7) CIVIL ACTIONS.—Either the Secretary or the Attorney General may bring a civil action in an appropriate district court of the United States to enforce this subsection or a regulation prescribed or order issued under this subsection. The court may award appropriate relief, including injunctive relief.

(8) LIMITATION ON STATUTORY CONSTRUCTION.—This subsection shall not be construed as affecting the requirement for all foreign motor carriers and foreign motor private carriers operating in the United States to comply with all applicable laws and regulations pertaining to fitness, safety of operations, financial responsibility, and taxes imposed by section 4481 of the Internal Revenue Code of 1986.

(d) TRANSITION RULE.—

(1) IN GENERAL.—Pending the implementation of the rule-making required by section 13908, the Secretary may register a person under this section—

(A) as a motor common carrier if such person would have been issued a certificate to provide transportation as a motor common carrier under this subtitle on December 31, 1995; and

(B) as a motor contract carrier if such person would have been issued a permit to provide transportation as a motor contract carrier under this subtitle on such day.

(2) DEFINITIONS.—In this subsection, the terms “motor common carrier” and “motor contract carrier” have the meaning such terms had under section 10102 as such section was in effect on December 31, 1995.

(3) TERMINATION.—This subsection shall cease to be in effect on the transition termination date.

(e) PENALTIES FOR FAILURE TO COMPLY WITH REGISTRATION REQUIREMENTS.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) OUT-OF-SERVICE ORDERS.—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this section is operating without a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

(2) PERMISSION FOR OPERATIONS.—A person domiciled in a country contiguous to the United States with respect to which an action under subsection (c)(1)(A) or (c)(1)(B) is in effect and providing transportation for which registration is required under this section shall maintain evidence of such registration in the motor vehicle when the person is providing the transportation. The Secretary shall not permit the operation in interstate commerce in the United States of any motor vehicle in which there is not a copy of the registration issued pursuant to this section.

(f) MODIFICATION OF CARRIER REGISTRATION.—

(1) IN GENERAL.—On and after the transition termination date, the Secretary—

(A) may not register a motor carrier under this section as a motor common carrier or a motor contract carrier;

(B) shall register applicants under this section as motor carriers; and

(C) shall issue any motor carrier registered under this section after that date a motor carrier certificate of registration that specifies whether the holder of the certificate may provide transportation of persons, household goods, other property, or any combination thereof.

(2) PRE-EXISTING CERTIFICATES AND PERMITS.—The Secretary shall redesignate any motor carrier certificate or permit issued before the transition termination date as a motor carrier certificate of registration. On and after the transition termination date, any person holding a motor carrier certificate of registration redesignated under this paragraph may provide both contract carriage (as defined in section 13102(4)(B)) and transportation under terms and conditions meeting the requirements of section 13710(a)(1). The Secretary may not, pursuant to any regulation or form issued before or after the transition termination date, make any distinction among holders of motor carrier certificates of registration on the basis of whether the holder would have been classified as a common carrier or as a contract carrier under—

(A) subsection (d) of this section, as that section was in effect before the transition termination date; or

(B) any other provision of this title that was in effect before the transition termination date.

(3) TRANSITION TERMINATION DATE DEFINED.—In this section, the term “transition termination date” means the first day of January occurring more than 12 months after the date of enactment of the Unified Carrier Registration Act of 2005.

(g) MOTOR CARRIER DEFINED.—In this section and sections 13905 and 13906, the term “motor carrier” includes foreign motor private carriers.

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§ 13905. Effective periods of registration

(a) PERSON HOLDING ICC AUTHORITY.—Any person having authority to provide transportation or service as a motor carrier, freight forwarder, or broker under this title, as in effect on December 31, 1995, shall be deemed, for purposes of this part, to be registered to provide such transportation or service under this part.

(b) PERSON REGISTERED WITH SECRETARY.—

(1) IN GENERAL.—Except as provided in paragraph (2), any person having registered with the Secretary to provide transportation or service as a motor carrier or motor private carrier under this title, as in effect on January 1, 2005, but not having registered pursuant to section 13902(a), shall be treated, for purposes of this part, to be registered to provide such transportation or service for purposes of sections 13908 and 14504a.

(2) EXCLUSIVELY INTRASTATE OPERATORS.—Paragraph (1) does not apply to a motor carrier or motor private carrier (including a transporter of waste or recyclable materials) engaged exclusively in intrastate transportation operations.

(c) IN GENERAL.—Except as otherwise provided in this part, each registration issued under section 13902, 13903, or 13904 shall be effective from the date specified by the Secretary and shall remain in effect for such period as the Secretary determines appropriate by regulation.

(d) SUSPENSION, AMENDMENTS, AND REVOCATIONS.

(1) IN GENERAL.—On application of the registrant, the Secretary may amend or revoke a registration. On complaint or on the Secretary’s own initiative and after notice and an opportunity for a proceeding, the Secretary may (A) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with this part, an applicable regulation or order of the Secretary or of the Board (*including the accessibility requirements established by the Secretary under subpart H of part 37 of title 49, Code of Federal Regulations, or such successor regulations to those accessibility requirements as the Secretary may issue, for transportation provided by an over-the-road bus*), or a condition of its registration; and (B) suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder: (i) for failure to pay a civil penalty imposed under chapter 5, 51, 149, or 311 of this title; or (ii) for failure to arrange and abide by an acceptable payment plan for such civil penalty, within 90 days of the time specified by order of the Secretary for the payment of such penalty. Subparagraph (B) shall not apply to any person who is unable to pay a civil penalty because such person is a debtor in a case under chapter 11 of title 11, United States Code.

(2) REGULATIONS.—Not later than 12 months after the date of the enactment of this paragraph, the Secretary, after notice

and opportunity for public comment, shall issue regulations to provide for the suspension, amendment, or revocation of a registration under this part for failure to pay a civil penalty as provided in paragraph (1)(B).

(e) PROCEDURE.—Except on application of the registrant, the Secretary may revoke a registration of a motor carrier, freight forwarder, or broker, only after—

(1) the Secretary has issued an order to the registrant under section 14701 requiring compliance with this part, a regulation of the Secretary, or a condition of the registration; and

(2) the registrant willfully does not comply with the order for a period of 30 days.

(f) EXPEDITED PROCEDURE.—

(1) PROTECTION OF SAFETY.—Notwithstanding subchapter II of chapter 5 of title 5, the Secretary—

(A) may suspend the registration of a motor carrier, a freight forwarder, or a broker for failure to comply with requirements of the Secretary pursuant to section 13904(c) or 13906 or an order or regulation of the Secretary prescribed under those sections; and

(B) shall revoke the registration of a motor carrier that has been prohibited from operating in interstate commerce for failure to comply with the safety fitness requirements of section 31144.

(2) Imminent hazard to public health.—Without regard to subchapter II of chapter 5 of title 5, the Secretary shall revoke the registration of a motor carrier of passengers if the Secretary finds that such carrier has been conducting unsafe operations which are an imminent hazard to public health or property.

(3) NOTICE; PERIOD OF SUSPENSION.—The Secretary may suspend or revoke under this subsection the registration only after giving notice of the suspension or revocation to the registrant. A suspension remains in effect until the registrant complies with the applicable sections or, in the case of a suspension under paragraph (2), until the Secretary revokes the suspension.